

California, Duff had May draft a proposal to acquire the permit. MMB Ex. 134.

Ultimately, however, Duff decided not to pursue the matter. Tr. 1721. Neither Crouch nor Espinoza professed to know about Duff's interest in the Oroville station. Tr. 2715, 4358.

65. Meanwhile, Crouch had been contacted about the possible availability of a television station in Wilmington, Delaware. Tr. 2716. After Crouch determined what NMTV's offer should be, May transmitted a purchase proposal for the station on March 23, 1987. At a time when NMTV did not even have a bank account, the proposal reflects that NMTV offered more than \$4 million for the station's equipment, plus additional sums for the station's land. MMB Ex. 137; Jt. Ex. 1, p. 16; Tr. 1725. While Espinoza claims he and Duff discussed in 1987 the possible purchase of a station in Wilmington, there are no contemporaneous board minutes or resolutions regarding the Wilmington proposal. Tr. 1725-6, 4229, 4359-60.

66. With the next "Praise the Lord" newsletter following the filing of the Odessa application (March 1987), Crouch announced that TBN "continues to lead the way as the largest group owner currently of TV stations in America with over 50 Wholly owned stations, over 25 affiliated stations, and over 550 cable stations in all 50 states!" MMB Ex. 133, p. 1. The last page of the newsletter includes a list of studio locations and telephone numbers. Only one, in Gadsden, Alabama, is identified as an affiliated station. The others listed were TBN's owned and operated full power stations, its Denver low power station, its foreign stations, and CET's Beaumont and Harlingen stations. MMB Ex. 133, p. 4. The

listing is consistent with TBN's practice of advising its supporters of the addresses and phone numbers of all TBN and CET stations in the "Praise the Lord" newsletters as soon as the stations became operational. MMB Ex. 53, p. 1; MMB Ex. 89, p. 1; MMB Ex. 104, p. 4; MMB Ex. 111, p. 4.

Odessa, Texas

67. On June 22, 1987, less than two weeks after the Commission granted the Odessa assignment application, the NMTV board held a special meeting to consider what to do with the authorization. According to the minutes, Crouch moved to sell the Odessa permit while Duff and Espinoza wanted to build and operate the station. Given Duff's and Espinoza's position, Crouch's motion failed for lack of a second vote. The board then authorized the corporate officers to open a bank account, and Espinoza pushed to have planning begun for local programming for the Odessa station. Crouch believed NMTV should not spend any money for local programming until the station was financially sound. However, Duff again sided with Espinoza and agreed to develop plans for local programming. Finally, because the corporation had no money, the board agreed to authorize the corporate officers to obtain a loan. The minutes do not reveal the amount or source of the loan; however, it was understood that NMTV would obtain the needed construction money from TBN. MMB Ex. 147. When the Odessa transaction was closed on June 30, 1987, NMTV obtained from TBN the \$12,500 needed to purchase the permit from Roever. MMB Ex. 167; Jt. Ex. 1, p. 17; Tr. 1701.

68. Sometime before the Odessa permit was granted, Crouch had determined that the Odessa station was incapable of making enough money to make construction worthwhile. Tr. 2383. While he ultimately acceded to the wishes of Duff and Espinoza to build the station, he made no effort to assist or prod Duff either to build a studio for the production of local programming or to develop local programming.¹⁶ Tr. 2722-6. In fact, no studio was ever constructed for the Odessa station. Further, although the June 22, 1987, minutes indicate that Duff and Espinoza were anxious to build the Odessa station and air local programming, no local programming was ever developed. Neither Duff nor anyone else prepared an Odessa station budget which called for the development of local programming. Tr. 1483, 4223-30, 4236-7.

69. Construction of NMTV's Odessa station began in early 1988 after land suitable for a transmitter site was located. MMB Ex. 179. Basically, TBN personnel and procedures were used in the construction of the station, and TBN made money available for construction expenses on an as-needed basis. MMB Ex. 185; MMB Ex. 186; MMB Ex. 187; MMB Ex. 191; Glendale Ex. 210, pp. 91-3; Tr. 2773-80. TBN's chief engineer, Miller, oversaw construction. Glendale Ex. 210, pp. 22, 36. TBN's administrative and engineering

¹⁶ Crouch's ambivalent attitude toward the Odessa station is revealed by the absence of references to it in TBN's "Praise the Lord" newsletters. Whereas TBN had in the past proudly proclaimed each acquisition, the newsletters say nothing about Odessa until October 1987 when the grant of the Odessa application is included in the "list of miracles." Further, Crouch himself said nothing in the newsletters about Odessa until January 1988 when he stated: "We are building Channel 42 in *Midland/Odessa, Texas*. We are waiting for FCC approval for Channel 24 in *Portland*." (Italics in original) MMB Ex. 160, p. 10; MMB Ex. 175, p. 2.

personnel were made available at no charge to NMTV. According to Crouch, TBN did not use a hard-line business approach with NMTV because TBN was the sponsoring organization. TBF Ex. 104, p. 16.

70. NMTV's Odessa station, KMLM(TV), began broadcasting by mid-October 1988. MMB Ex. 222. On October 21, 1988, Duff, on behalf of NMTV, signed a TBN program affiliation agreement for the station. There is no evidence anyone signed the agreement on behalf of TBN, although Duff says she gave it to Crouch to review. MMB Ex. 223; Tr. 1846-8. In any event, KMLM(TV) began broadcasting TBN programming, and the "Praise the Lord" newsletter commenced listing the station among the TBN owned and operated stations and the CET stations. MMB Ex. 225, p. 6; Tr. 4145. Throughout the period that NMTV held the license for KMLM(TV), only TBN programming was broadcast. Tr. 1433.

71. On December 12, 1988, NMTV held a special meeting of its board of directors. Among other things, Crouch again asked the board to consider selling KMLM(TV) and acquiring a station in a larger market. Both Espinoza and Duff objected, with Duff asserting that the station was receiving adequate support and meeting the needs of the community. Nevertheless, and despite the fact that money was being committed for the purchase of a studio for the recently-acquired Portland station (see ¶¶ 85, infra), there was no consideration given to setting aside funds for the construction of a studio for KMLM(TV). MMB Ex. 230.

72. Notwithstanding Duff's and Espinoza's objections to Crouch's proposal to sell KMLM(TV), they collectively signed some six months later an action by written consent to authorize Crouch to negotiate the sale of the station. MMB Ex. 256. Duff relates that NMTV had the opportunity to go into a bigger market and found a buyer that was willing to continue broadcasting TBN programming. Tr. 1882-3. Although negotiations with the prospective buyer, Prime Time Christian Broadcasting, Inc. ("Prime Time"), waxed and waned during the ensuing months, Duff eventually reached an agreement to sell the station in December 1990, with the sale closing following Commission approval in early 1991. MMB Ex. 348; MMB Ex. 358; TBF Ex. 101, Tab R, p. 136. Once Prime Time became the licensee, the "Praise the Lord" newsletter no longer listed KMLM(TV) among the TBN and CET stations. Compare MMB Ex. 341, p. 3 with MMB Ex. 349, p. 5.

73. The sales price for KMLM(TV) was \$650,000, more than \$100,000 *below* NMTV's construction costs. MMB Ex. 257, p. 7; MMB Ex. 277; Tr. 2863. Duff, who negotiated the sales price, did not know whether the sales price reflected the station's fair market value. Tr. 2222, 2224. Prime Time did not pay cash. Rather, Prime Time was to pay NMTV in installments with money derived from contributions from viewers in the Odessa area. Tr. 2067-8. During the period NMTV was attempting to sell the station, it did not solicit or consider offers from a commercial non-religious buyer. Tr. 3045. In fact, the only entities considered as buyers were those that would continue broadcasting TBN programming. Tr. 2224-6, 3035-6.

74. During the time NMTV held the license for KMLM(TV), Duff and Miller supervised the station's management. Basically, as she did for TBN's stations, Duff directed matters involving personnel, EEO, political broadcasting rules and public files. MMB Ex. 241; MMB Ex. 259; MMB Ex. 262; MMB Ex. 268; MMB Ex. 284; MMB Ex. 308; MMB Ex. 345; Glendale Ex. 105; Glendale Ex. 107; Tr. 1400, 1895, 1905, 2072, 2131, 2848-9. As he did for TBN's stations, Miller oversaw engineering activities, including the transfer of equipment from TBN to the Odessa station. MMB Ex. 313; MMB Ex. 328; MMB Ex. 335; MMB Ex. 340; Glendale Ex. 108; Glendale Ex. 135; Glendale Ex. 137; Glendale Ex. 151; Glendale Ex. 155; Glendale Ex. 158; Glendale Ex. 210, p. 29, 86, 102-3. TBN's finance department processed the station's payroll and purchases. MMB Ex. 125; MMB Ex. 229; MMB Ex. 313. Duff and Miller were salaried TBN employees during all relevant periods. They performed their NMTV-related activities during their normal TBN workdays. Neither of their salaries was affected by the work they did for NMTV. Glendale Ex. 210, pp. 29-30; Tr. 1786-88.

75. From April 1991 through and including April 1993, KMLM(TV) was operated by Prime Time. Prime Time and TBN had an affiliation agreement which provided that TBN would retain a certain percentage of the money received by KMLM(TV) viewers; the remainder would be paid to Prime Time. Although it appears that TBN received money pursuant to the affiliation agreement, there is no evidence that NMTV received any money from Prime Time. Tr. 2228, 3042.

76. During this period, Prime Time also had affiliation agreements with TBN with respect to low power stations licensed to Prime Time in Alamogordo, Carlsbad and Hobbs, New Mexico. Glendale Ex. 214; Glendale Ex. 215. Pursuant to the affiliation agreements, TBN received revenue from all locations, some of which TBN credited to Prime Time. Prime Time executed notes to TBN with respect to loans made by TBN to Prime Time for the low power stations. By the end of 1992, Prime Time's indebtedness to TBN on the notes, including interest, totalled more than \$210,000. Jt. Ex. 1, pp. 30-1.

77. By early 1993, it became apparent to Crouch that Prime Time could not repay its debt to NMTV. Tr. 2980-3. On April 20, 1993, 13 days after release of the HDO in this proceeding, the NMTV board, with Crouch abstaining, voted to forgive Prime Time's debt of \$650,000. TBF Ex. 105, Tab L; MMB Ex. 412. Without the debt to NMTV, Prime Time could expand its operations by building translators that would extend coverage of its principal station in Roswell, New Mexico, and KMLM(TV) in Odessa. Tr. 2980-3. Like KMLM(TV), Prime Time's Roswell station was also a TBN affiliate. Crouch understood that, at least financially, NMTV's action benefitted TBN but not NMTV. Tr. 3046-7.

Portland, Oregon

78. Shortly after the Commission granted NMTV's application to acquire the Odessa station, Duff was made aware of an available construction permit for channel 24 in Portland, Oregon. TBF Ex. 101, p. 34. On October 9, 1987, May sent a proposal to acquire the

station for NMTV, which he described as being affiliated with TBN. MMB Ex. 161; Tr. 1753, 2741-2. On October 21, 1987, NMTV's three directors signed an action by written consent authorizing Crouch to execute all contracts necessary to acquire the station and to execute all loan and financing agreements necessary to pay for the station. MMB Ex. 163. NMTV, rather than TBN, sought to acquire the station because TBN had its full complement of stations. Tr. 1754-5. Nonetheless, it was understood from the outset that the Portland station would broadcast TBN programming. Tr. 4365.

79. By letter dated November 13, 1987, May, on behalf of NMTV, agreed to a sales price of \$520,000 for the Portland station. MMB Ex. 166. On November 20, 1987, Crouch and Duff held a special meeting of NMTV's board. Among other things, they authorized spending up to \$520,000 to acquire the Portland construction permit, and \$4,000 per month to lease tower space for the Portland station. MMB Ex. 170. A TBN board meeting of the same day makes no mention of any impending loan to NMTV. MMB Ex. 169. During November 1987, TBN's financial records showed that NMTV had cash and capital assets of less than \$290,000, while its liabilities exceeded \$600,000. Jt. Ex. 1, p. 16; MMB Ex. 156. Nonetheless, none of the NMTV directors felt any concern about acquiring the Portland station while the company was in debt because each understood that TBN would provide whatever funds were necessary to buy and build the station. Tr. 1763, 2742, 4269-70.

80. On December 17, 1987, Crouch signed the asset purchase agreement for the Portland station on behalf of NMTV. TBF Ex. 101, Tab T, p. 25. That night he announced

the signing on TBN. TBF Ex. 106, pp. 10-1. On December 18, 1987, May filed the application to assign the construction permit for channel 24, Portland, to NMTV. TBF Ex. 101, Tab T.

81. May copied the information contained in NMTV's portion of the assignment application for the Portland permit from the comparable portion of NMTV's application for Odessa. Thus, the application repeated the omissions of the Odessa application and failed to list TBN employees Hickey and Phillip Crouch as officers of NMTV.¹⁷ Like the Odessa application, the Portland application is silent about Duff's role at TBN. Tr. 3596-8. May advised Duff and Crouch that NMTV was entitled to apply for the Portland station under May's interpretation of the Commission's multiple ownership rules. Tr. 3208. Crouch claims to have told May to disclose to the Commission whatever May thought necessary. Tr. 2755-6. After reviewing the Portland application in the same cursory manner as he had the Odessa application, Crouch signed it. Tr. 2749-50.

82. As did the NMTV application for Odessa, the NMTV application for Portland incorrectly reports that the company has, and had during its entire history, only three directors and officers; namely, Crouch, Duff and Espinoza. The application discloses Crouch's television holdings but submits that because two of NMTV's three directors are

¹⁷ On June 24, 1987, the TBN ownership report did state that Hickey and Phillip Crouch were NMTV officers as well as TBN officers. TBF Ex. 101, Tab R, pp. 39-57. In addition, TBN's 1988 ownership report, submitted on July 15, 1988, listed Phillip Crouch as an officer of NMTV, TBN and the various domestic Trinity-named licensees. MMB Ex. 205.

minorities, NMTV qualifies as a minority controlled company and Crouch can therefore have an interest in a 14th television station pursuant to Section 73.3555(d)(1) of the Commission's Rules. Although the application references translator applications filed by TTI in which it had been stated that Duff was then a director of TBN and reveals that both Crouch and Duff had interests in two CET stations and the NMTV station in Odessa, the application provides no information about Duff's or NMTV's relationship with TBN, nor does it refer to NMTV's July 1987 low power filings (see ¶ 98, infra). MMB Ex. 174, pp. 10-14.

83. Crouch wasted no time in informing TBN's supporters about the Portland application. In the January 1988 "Praise the Lord" newsletter, he wrote: "We are waiting for FCC approval for Channel 24 in Portland." MMB Ex. 175, p. 2. Likewise, in February 1988, Crouch told supporters: "[J]ust a few days ago, we signed the final contract for Channel 24, Portland, Oregon. Portland will be operated by National Minority TV, an affiliated corporation of which I am President . . . [A supporter writes that she] can't wait till TBN is on the air in her home in PORTLAND!"¹⁸ MMB Ex. 181, p. 1. Apparently, Crouch's information generated responses, for, on January 18, 1988, Duff wrote to a job seeker that, since the application had just been filed, consideration of personnel for the station was premature. She signed the letter on TBN stationery as assistant to the president. MMB Ex. 177, p. 2. Duff believes that sending the letter on TBN stationery was a mistake. Tr. 1791.

¹⁸ Crouch was so excited about the prospect of broadcasting in Portland that he twice announced that the application had been granted before grant actually occurred. MMB Ex. 206, p. 1; MMB Ex. 213, p. 3.

84. During the pendency of the Portland application, Duff and May negotiated a lease for space on a tower for the station's antenna. Because the tower owner apparently was concerned about additional competition, he originally sought the right to cancel the lease in the event NMTV dropped its religious format or became a for profit corporation. Duff proposed that the tower owner only have the right to raise the rent a specified percentage. TBF Ex. 105, Tab T, p. 2. Ultimately, Duff's position prevailed. TBF Ex. 105, Tab U, pp. 3-4. According to May, the change in lease terms was important because it "protected the integrity of NMTV's right to cancel its program affiliation with TBN." TBF Ex. 105, p. 19. Even though Crouch was heavily involved in the negotiation of the tower antenna lease, there is no evidence that anyone other than Duff or May knew of the provision or that NMTV ever had any plans to drop TBN programming or become a for profit corporation. MMB Ex. 238, p. 1; Tr. 2840-2.

85. The Commission granted the application to assign the construction permit for channel 24 in Portland on October 27, 1988. TBF Ex. 101, p. 35; Tr. 3527. The transaction was closed on December 19, 1988. MMB Ex. 231; MMB Ex. 353, p. 5, n.6. Crouch informed the TBN and affiliated corporations' boards of the Commission's action at TBN's 1989 annual meeting. MMB Ex. 236, p. 2. In the meantime, NMTV held a board meeting to discuss, among other things, what NMTV should offer for a building Duff had identified as a possible studio site for the new Portland station. After Duff reported that the asking price was \$650,000, Crouch proposed offering only \$400,000. Neither Duff nor Espinoza seconded Crouch's motion. Duff thereupon proposed offering no more than

\$500,000. Espinoza voted in favor; Crouch did not. MMB Ex. 230; TBF Ex. 101, p. 5. Ultimately, NMTV paid \$425,000 for the building. MMB Ex. 233.

86. Construction of the Portland station began no later than April 1989. MMB Ex. 249; MMB Ex. 251. As had been the case with the Odessa station, TBN personnel and procedures were used to oversee construction of the station, and TBN made equipment and money available for construction expenses on an as-needed basis. MMB Ex. 234; MMB Ex. 251; MMB Ex. 252; MMB Ex. 266; MMB Ex. 276, p. 2; MMB Ex. 281; Glendale Ex. 210, pp. 34-5, 125-6; Tr. 1420-1, 1869-70. Once again, TBN's administrative and engineering personnel were made available at no charge to NMTV. Tr. 1409.

87. NMTV's Portland station began broadcasting on November 16, 1989. Glendale Ex. 216, p. 11; MMB Ex. 353, p. 5, n. 6. On December 4, 1989, Duff and Crouch, on behalf of NMTV and TBN, respectively, signed a program affiliation agreement for NMTV's Portland station. MMB Ex. 283. The terms of the agreement were virtually identical with the terms of the NMTV/TBN Odessa affiliation agreement. As far as Crouch understood, however, it was a standard TBN affiliation agreement. Tr. 2880-1. With the exception of three local programs, the first of which began airing in 1992, NMTV's Portland station has aired only TBN programming, and TBN's programming department prepares the Portland station's quarterly issues-programs list. TBF Ex. 109, p. 14; Glendale Ex. 113; Tr. 4404-6, 4424. Beginning with the January 1990 edition, the "Praise the Lord" newsletter listed the Portland station (Station KTDZ(TV), later KNMT-TV) among the TBN owned and operated

stations and the CET stations. MMB Ex. 291, p. 5.

88. During the construction and operation of NMTV's Portland station, Duff, and to a lesser extent, Miller, supervised station management. In this regard, Duff, with Crouch's concurrence, hired the station manager, James McClellan ("McClellan"), and she has regularly monitored and instructed McClellan as to non-engineering matters. TBF Ex. 109, pp. 10-1; MMB Ex. 345; MMB Ex. 357; MMB Ex. 359; Glendale Ex. 111; Glendale Ex. 112; Glendale Ex. 117; Glendale Ex. 118; Glendale Ex. 119. At the time he was hired, McClellan was a TBN employee and air personality. TBF Ex. 109, pp. 3-4, 6-9; MMB Ex. 288. Miller apparently recommended the hiring of the station's chief engineer, Mark Fountain ("Fountain"), and subsequently provided advice and oversight regarding engineering questions. MMB Ex. 273; MMB Ex. 289; MMB Ex. 292; MMB Ex. 298; MMB Ex. 310; MMB Ex. 397; Glendale Ex. 153; Glendale Ex. 154; Glendale Ex. 156, p. 1; Glendale Ex. 161; Glendale Ex. 164; Glendale Ex. 166; Glendale Ex. 169; Glendale Ex. 170; Glendale Ex. 177; Glendale Ex. 179; Tr. 1407, 1910-1. Miller even recommended that Fountain receive a bonus for his efforts to get the Portland station on the air. Glendale Ex. 156, p. 1. Fountain, like McClellan, was a TBN employee at the time of his hiring by NMTV. Tr. 1407-8. TBN's accounting department has processed the station's payroll, collections and expenditures. MMB Ex. 125; TBF Ex. 109, p. 12; Tr. 2335-6.

Wilmington/Philadelphia

89. As noted above, May first explored the possibility of acquiring for NMTV a television station licensed to Wilmington, Delaware (Station WTGI, Channel 61), in March 1987. MMB Ex. 137. Subsequently, Duff and/or Crouch considered acquiring, in the name of NMTV, a station in Hammond, Indiana, and, later, Concord, California. MMB Ex. 300; MMB Ex. 315. However, nothing came of those plans. Tr. 2379-80. In the meantime, TBN increased its audience reach by selling TBA's Albuquerque station and acquiring a construction permit for a station in the Atlanta area. MMB Ex. 197; MMB Ex. 291, pp. 1-2.

90. Interest in acquiring Channel 61, Wilmington, for NMTV resumed in the late summer or autumn of 1990. TBF Ex. 121, pp. 41-2. After receiving word that the station was still available, Crouch sent Dale Osborn ("Osborn"), station manager for TBN's Canton, Ohio, television station, to the Wilmington/Philadelphia area to inspect the station's equipment and ascertain the station's coverage. Osborn reported his findings to Duff and Miller in November 1990. MMB Ex. 331; MMB Ex. 333. Osborn's salary was unaffected by the work he performed on behalf of NMTV. Tr. 2921.

91. After Miller reviewed Osborn's report and worked up a rough estimate of the station's worth, Duff arranged a line of credit for NMTV in the amount of \$3.6 million from the bank used by both TBN and NMTV. MMB Ex. 334; Tr. 2118. As security for the line

of credit, Duff agreed to deposit \$3.6 million in cash in the bank. MMB Ex. 334, p. 2. It was understood that the cash would come from TBN. Tr. 2119, 2922. Phillip Aguilar, who had replaced Espinoza as NMTV's third director, was informed of the possible purchase of a station in Wilmington but did not know the source of the purchase money. TBF Ex. 107, pp. 145-9.

92. At NMTV's 1991 annual meeting, Crouch reported that he would appear at the bankruptcy proceeding concerning the Wilmington station's licensee in order to submit a bid for the station and its equipment. MMB Ex. 338. Apparently, he did so and submitted the winning bid, for, on March 13, 1991, Crouch and Allan Brown, TBN's head of finance, signed, on behalf of NMTV, a check for \$400,000 to cover the deposit for the Wilmington station. TBF Ex. 121, pp. 54-5; Tr. 2329. At the time Brown signed the NMTV check, he was not an officer of NMTV. TBF Ex. 101, Tab R, p. 95; MMB Ex. 355; MMB Ex. 396, p. 2. On March 29, 1991, May & Dunne filed the application to assign the license of Station WTGI(TV), Wilmington, to NMTV. TBF Ex. 101, Tab R, pp. 89-145.

93. The information in NMTV's portion of the application differs somewhat from the information contained in the Odessa and Portland applications. For example, NMTV twice gave as its address the address of its station in Portland, rather than the California address previously used. Compare, TBF Ex. 101, Tab R, pp. 93, 142, with TBF Ex. 101, Tab Q, p. 22, and TBF Ex. 101, Tab T, p. 53. This time, the NMTV application correctly listed its officers and directors and noted that officers Matthew Crouch and Charlene Williams were

officers but not directors of the same companies as Crouch. However, the application did not reveal that Duff, Matthew Crouch and Charlene Williams were employees of TBN. TBF Ex. 101, Tab R, pp. 95, 135.

94. Crouch devoted most of his portion of the May 1991 "Praise the Lord" newsletter to the possibility of acquiring the Wilmington station. Therein, he stated: "we signed the agreement and deposited the down payment for *FULL POWER CHANNEL 61* serving the great Wilmington, Delaware - - Philadelphia, Pennsylvania area! *Praise the Lord!* This will be, God willing, and the FCC approving, a *National Minority TV* station (of which I am President) working in full affiliation with *your* TBN." MMB Ex. 349, p. 1. After additional exhortations, Crouch closed with a request for funds for TBN so that "WE [WILL] HAVE ENOUGH TO PAY FOR CHANNEL 61!" MMB Ex. 349, p. 2. By September, TBN had received \$37,000 in contributions for the purchase of the station; NMTV had received none. TBF Ex. 121, pp. 16, 48.

95. On May 10, 1991, a petition to deny was filed against the assignment of the Wilmington station to NMTV by Dan Borowicz. Among other things, the petition alleged that TBN and/or Crouch controlled NMTV. MMB Ex. 374, p. 1. On May 23, 1991, NMTV filed its opposition. Therein, it was first revealed to the Commission that Duff was "'Assistant to the President' of Trinity Broadcasting Network, a title which means what it says -- she holds virtually the second highest management office in the Network's hierarchy." MMB Ex. 353, p. 20. In addition, the opposition argued that NMTV's board of directors

need only have legal, not actual working, control over NMTV's stations to qualify for the minority-controlled exception to the multiple ownership rules.¹⁹ MMB Ex. 353, p. 12-23. The opposition did not reveal that TBN personnel handled *all* of NMTV's income and expenses and that the only programming NMTV's stations had ever aired was TBN programming.

96. While the Wilmington application and petition to deny were pending, Crouch had Miller analyze the Wilmington station's potential coverage.²⁰ MMB Ex. 362; MMB Ex. 363. Apparently, the reports satisfied Crouch, for, on August 14, 1991, TBN's board voted to lend NMTV \$3.6 million. MMB Ex. 367. On August 23, 1991, Duff executed a promissory note to TBN prepared by Juggert in the amount of \$4 million, which represented the entirety of the sums made available to NMTV by TBN for the purchase of the Wilmington station. MMB Ex. 368; Tr. 2147. This note was the first ever executed by NMTV with respect to money given or loaned to it by TBN. Jt. Ex. 1, p. 26. Duff's action was subsequently ratified in an action by written consent of NMTV's board. MMB Ex. 369.

97. On September 13, 1991, the Commission directed a letter of inquiry to NMTV in order to determine, inter alia, whether TBN and/or Crouch controlled NMTV. May forwarded the letter to Crouch and Duff that same day. Glendale Ex. 196. Aguilar

¹⁹ NMTV expanded on this argument in its November 18, 1991, Request for Declaratory Ruling. Glendale Ex. 216, pp. 15-28.

²⁰ Subsequently, Miller travelled to the station to inspect the studio and transmitter site. MMB Ex. 371.

subsequently learned of the Commission's letter via a conference call. TBF Ex. 107, p. 210. NMTV responded to the Commission's letter on September 24, 1991. TBF Ex. 121. Before the Commission could act on the allegations made in the Borowicz petition to deny, NMTV dismissed its application to acquire Station WTGI(TV), Wilmington, Delaware. MMB Ex. 377; MMB Ex. 379; TBF Ex. 105, Tab L, p. 1; MMB Ex. 387, p. 13.

Low Power Filings

98. On June 25, 1987, Duff, as vice president of NMTV, signed certifications for four low power television construction permit applications. May filed the applications on July 2, 1987. The applications were the first group of such applications filed by NMTV since 1981. The markets sought were Fresno, California; Waldorf, Maryland; Douglasville, Georgia; and San Diego, California. MMB Ex. 149; Tr. 2195-6. There was no discussion of the applications at the June 22, 1987, special meeting of NMTV's board of directors. MMB Ex. 147.

99. In each application, NMTV claimed a minority preference but not a diversity preference. NMTV also certified that it was financially qualified to construct and operate the proposed facilities. Although NMTV filed an application for a low power operation, it proposed an unattended operation with fewer than 5 full-time employees. Miller, TBN's chief engineer, certified the applications' technical information. MMB Ex. 149, pp. 6-7, 9-10. Although Espinoza testified that Duff told him about the Fresno application, neither

Crouch nor Espinoza appear to have been involved in the process of choosing the markets sought or deciding to file the applications. Tr. 4385-6. Moreover, Crouch acknowledges that he may not even have known about the Fresno filing. MMB Ex. 147; Tr. 2728-31.

100. At the time the NMTV low power applications were filed, Duff was in charge of low power operations for TBN. MMB Ex. 107, p. 2. She was assisted by Miller, TBN's chief engineer, George Sebastian ("Sebastian"), a TBN volunteer, and Kevin Fisher ("Fisher"), a TBN contract engineer. MMB Ex. 171; Tr. 1774-5, 1869, 2747, 3466-8. It appears that the communities chosen by Duff did not receive over-the-air programming from TBN. Tr. 1744-5. It was understood that the new NMTV low power stations would carry TBN programming. Tr. 3097-104.

101. Of the low power applications filed by NMTV in July 1987, only the Fresno application was granted. When the grant occurred on June 23, 1988, Duff informed Crouch and TBN's engineering department, which then immediately took steps to get the station built. MMB Ex. 200; MMB Ex. 208; Tr. 1816, 1851, 2452-4, 2789. On November 17, 1988, low power Station K56DZ signed on and began broadcasting TBN programming. MMB Ex. 226. The station has continued to broadcast TBN programming, and NMTV has never had employees at the Fresno station. TBN's engineering department oversees all maintenance of the station. MMB Ex. 228; MMB Ex. 346.

102. May subsequently filed construction permit applications for translator or low

power stations for NMTV on June 24, 1988; March 31, 1989; December 8, 1989; May 3, 1991; February 14, 1992; and April 2, 1993. TBF Ex. 105, Tab K. When translator, as opposed to low power, operations were proposed, the NMTV application would certify that it had written authority to rebroadcast KTBN-TV, Santa Ana, California, TBN's flagship station. MMB Ex. 201, p. 8; MMB Ex. 247, p. 5; MMB Ex. 285, p. 5; MMB Ex. 387, p. 5. In any event, it was understood that the stations would broadcast TBN programming. Tr. 2450, 2969-71, 4327. In virtually every case, the markets chosen were those not yet receiving TBN programming over the air. MMB Ex. 406; Tr. 2182. When the stations signed on, Crouch was informed so that he could then tell TBN's viewers. MMB Ex. 226; MMB Ex. 311; MMB Ex. 319; MMB Ex. 336; MMB Ex. 350; Glendale Ex. 200. Each station has continually broadcast TBN programming. MMB Ex. 341, p. 6.

103. During this period, Duff directed TBN's low power/translator operations and oversaw the process by which markets were chosen for NMTV. MMB Ex. 309; Tr. 2790-2, 2897. Duff was assisted by Sebastian, TBN's low power director or coordinator; Sebastian's successor, George Horvath ("Horvath"); Fisher, TBN's contract engineer; the law firm of May & Dunne; Miller, TBN's chief engineer; and the rest of TBN's engineering department. MMB Ex. 202; MMB Ex. 208; MMB Ex. 218; MMB Ex. 246; MMB Ex. 248; MMB Ex. 255; MMB Ex. 295; MMB Ex. 390; MMB Ex. 403; MMB Ex. 406; MMB Ex. 410; MMB Ex. 411; Glendale Ex. 134; Glendale Ex. 139; Glendale Ex. 210, pp. 70, 117-8, 131-2; Tr. 1412, 1868-9, 2851-2, 3447-9, 3466-8. On at least one occasion, Juggert also provided assistance. MMB Ex. 392. Routinely, when an application was granted, TBN's engineering

department endeavored to have the station built as quickly as possible and oversaw its technical operation. MMB Ex. 391; Tr. 1816, 2452-4. None of the low power/translator stations had any employees. All were serviced by contract engineers. MMB Ex. 353, p. 10, n.9; MMB Ex. 360; MMB Ex. 361. The record does not clearly show whether those persons were paid by TBN or by NMTV. In any event, the contract engineers were monitored by TBN employees. MMB Ex. 410.

104. Money generated by NMTV's low power/translator stations is handled by TBN's accounting department. MMB Ex. 125; Tr. 2313. However, neither the minutes of NMTV's annual meetings nor the financial statements reveal how funds are allocated to NMTV or whether funds generated by NMTV's low power and translator stations are subject to an affiliation agreement. MMB Ex. 237; MMB Ex. 257; MMB Ex. 293; MMB Ex. 322; MMB Ex. 338; MMB Ex. 364; MMB Ex. 386. In any event, there is no indication that anyone from NMTV's board has ever questioned why NMTV generated no low power revenue in 1988, 1989 and 1990, despite having operating stations in Fresno (1988), Salt Lake City (1989), Columbus (1989), and Charlotte (1990). MMB Ex. 226; MMB Ex. 311; MMB Ex. 319; MMB Ex. 336; Jt. Ex. 1, pp. 21-3.

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105. Throughout its history, TTI/NMTV has had at least one "outside" director, that is, a director who was not also an employee of TBN. However, the corporation has never

had more than two outside directors. Crouch never personally considered it. Tr. 2416-7.

106. As discussed above, the first outside director was Phillip David Espinoza. During his tenure as a TTI/NMTV board member, Espinoza usually attended the annual meetings of TTI (when that board met in conjunction with the board meetings of other TBN owned and operated corporations) and the annual meetings of NMTV. MMB Ex. 47; MMB Ex. 55; MMB Ex. 70; MMB Ex. 91; MMB Ex. 101; MMB Ex. 124; MMB Ex. 176; MMB Ex. 237; MMB Ex. 293. When NMTV began to have special meetings that were held solely to discuss NMTV business, Espinoza attended when he could and voiced his opinion even if it was contrary to Crouch's expressed views. MMB Ex. 128; MMB Ex. 147; MMB Ex. 170; MMB Ex. 230; MMB Ex. 300; MMB Ex. 315; TBF Ex. 106, pp. 9-10. However, in those instances where Espinoza and Crouch disagreed, Crouch's position eventually prevailed. For example, although Espinoza wanted to build the Odessa full power television station and broadcast local programming as soon as possible, Crouch's view that the station must be sold and that network (TBN) programming should air was the course of action NMTV followed. MMB Ex. 147; MMB Ex. 230; MMB Ex. 256; Tr. 4230-2, 4235, 4365-6.

107. During the time Espinoza was TTI/NMTV's chief financial officer, he never had better than a vague understanding about TTI/NMTV's financial condition, and he never questioned the information appearing in TTI/NMTV's financial statements. Tr. 4149-52, 4160-4, 4227-9, 4275, 4297, 4331-8, 4346-7. He simply knew that, whatever the project,

money would come from TBN. Tr. 4269-70, 4276-7, 4302-3, 4330, 4362, 4383-4. When the NMTV board decided to sell KMLM(TV), Odessa, Espinoza did not know how the proposed sales price was determined or whether the proposed sales price approximated the station's fair market value. Tr. 4378-9. He was totally dependent on Duff for information and to carry out his responsibilities as the corporation's financial officer. Tr. 4146, 4185-6, 4242-3.

108. Espinoza never knew the identity of the corporation's attorneys, consultants or accountants, and he believed Juggert was TTI/NMTV's attorney. Tr. 4200, 4319-20, 4325-6, 4347. May & Dunne never copied Espinoza on correspondence relating to TTI/NMTV sent to Crouch or Duff, and he did not receive copies of documents filed by TTI/NMTV with the Commission. Tr. 3111-5, 4197-8, 4287-93. In addition, Espinoza never questioned the need or propriety of having TBN employees as TTI/NMTV officers, and he never had anything more than a vague idea as to what the TBN employee/NMTV officers were supposed to do. Tr. 4250-2, 4263, 4279-80, 4274. Except for one meeting, neither the board minutes nor any other document suggests that Espinoza ever initiated any action or proposal for TTI/NMTV or that he had any role in the preparation of TTI/NMTV applications. MMB Ex. 147, p. 2; TBF Ex. 106, p. 5; Tr. 4232, 4237. Indeed, there were instances when Espinoza did not even know that applications were to be filed. Tr. 4387-8. Because he always viewed himself as a novice with respect to broadcasting, he merely reacted to whatever Crouch and/or Duff proposed. Tr. 4307-8. Espinoza never performed the duties of chief financial officer. Tr. 2306, 4179-80, 4183-4. Essentially, what Espinoza

understood was that TTI/NMTV was separate from TBN only in that TTI/NMTV could take advantage of certain Commission policies pertaining to minority ownership; otherwise, TTI/NMTV was simply another vehicle for TBN programming. TBF Ex. 106, pp. 6-8; Tr. 4140, 4142-3, 4145, 4169-70, 4172-3, 4258, 4294-5, 4343-5, 4365.

109. On July 23, 1990, Espinoza wrote to Crouch in order to submit his resignation as a board member of NMTV. TBF Ex. 106, pp. 15-6 and Tab A; Tr. 4395-6. Shortly thereafter, Duff called Phillip Russell Aguilar to inquire whether he would be interested in joining NMTV as a director. TBF Ex. 121, p. 61. Crouch and Duff selected Aguilar, in part, because of his proximity to TBN's offices. Crouch did not think about asking a minority from either the Odessa or Portland communities to join NMTV's board of directors. Tr. 2914-6. Aguilar understood he was asked to join the board because of his minority status and because he could provide a unique perspective in light of his background and work. TBF Ex. 107, pp. 188-9.

110. Aguilar had heard of NMTV. He was a friend of McClellan, who was manager of NMTV's Portland station. Aguilar believed that NMTV was an extension of the TBN network. TBF Ex. 107, pp. 26-7.

111. At the time, Aguilar was pastor of the Set Free Church in Anaheim, California, and president of Set Free Christian Fellowship, Inc. ("Set Free"). Among other things, Set Free endeavors to rehabilitate persons with alcohol and/or drug problems. In August 1985,

TBN and Set Free had entered into an agreement whereby TBN made available at no cost to Set Free a home in Anaheim which would provide temporary shelter for homeless individuals. MMB Ex. 97; MMB Ex. 100, pp. 2-3; MMB Ex. 102, p. 3. The agreement has since been renewed annually. TBF Ex. 107, p. 40; MMB Ex. 154; MMB Ex. 209. In addition, TBN had made available to Set Free property in Texas and Illinois. TBF Ex. 107, p. 42; TBF Ex. 121, pp. 64-5; Tr. 3025-7. Beginning in 1987, Set Free sent persons to work at TBN as telephone prayer partners and to pick up food and clothing for distribution to the needy in exchange for a \$5,000 per month payment from TBN. TBF Ex. 121, p. 64. Aguilar also knew Duff and Crouch from his appearances on KTBN-TV, TBN's flagship station. TBF Ex. 107, pp. 35-6.

112. On August 15, 1990, Crouch and Duff accepted Espinoza's resignation and elected Aguilar as NMTV's third director. Aguilar was also elected vice president; Duff was elected secretary/treasurer. MMB Ex. 318. Because Aguilar is Hispanic, NMTV continued to have minorities as two of its three board members.

113. At the August 15, 1990, meeting, Crouch and Duff gave Aguilar a general description of the purposes of NMTV and told him that he would be expected to attend board meetings and provide input into the business affairs of the corporation. Tr. 2314; 2912. Aguilar learned that NMTV owned two full power television stations and at least one low power television station in Fresno. TBF Ex. 107, p. 48. Duff also told him about NMTV's